

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

CASEY LEE TURK,

Petitioner,

vs.

BROADWATER COUNTY JAIL,
MONTANA STATE PRISON

Respondents.

CV-20-61-H-SEH

ORDER

This case is before the Court on a state pro se petition filed by Casey Lee Turk. Habeas corpus relief under 28 U.S.C. § 2241 is sought.¹ The petition is denied.

I. Turk's Federal Habeas Petition

Turk asserts he is being held in the Broadwater County Jail on a no bond probation/parole warrant issued by the Montana Probation and Parole Office in Butte.² He claims he was not served with a copy of the purported violations within 72-hours, that he was not provided a hearing within five days, and that the

¹ See Doc. 1.

² See *Id.* at 1.

Montana state “incentives and interventions grid” was not applied in his case.³

Release is sought.⁴ In the alternative, Turk requests the state be required to utilize the “incentives and interventions grid” in his case and provide a hearing during which Turk is allowed to speak and advocate on his own behalf.⁵

Turk’s filing declares he is in custody as a result of a warrant for a purported probation/parole violation issued by the Montana Department of Corrections. His current supervision and custody stem from an underlying state court judgment of conviction.⁶ Turk cannot proceed under 28 U.S.C. § 2241.⁷

28 U.S.C. § 2254 provides the sole remedy for any challenge to detention for one in custody by reason of a state court judgment.⁸ Turk’s petition does not identify a cognizable federal claim. Relief under 28 U.S.C. § 2254 has not been shown.⁹ An amended petition under § 2254 at this juncture would be futile.

³ See *Id.* at 2, 6.

⁴ See *Id.* at 7.

⁵ *Id.*

⁶ Turk has recent convictions out of Broadwater, Lewis and Clark, and Powell counties. See <https://app.mt.gov/conweb/Offender/2136950> (accessed August 4, 2020).

⁷ See *White v. Lambert*, 370 F.3d 1002, 1006 (9th Cir. 2004), overruled on other grounds by *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc); see also *Stow v. Murashige*, 389 F.3d 880, 886 (9th Cir. 2004).

⁸ See *White*, 370 F.3d at 1009–10.

⁹ See *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (federal habeas corpus relief does not lie for errors of state law).

Moreover, a federal court may not grant a writ of habeas corpus brought by an individual in custody on a state court judgment unless “the applicant has exhausted the remedies available in the courts of the State.”¹⁰

“The exhaustion-of-state-remedies doctrine, now codified at 28 U.S.C. §§ 2254(b) and (c), reflects a policy of federal-state comity, an accommodation of our federal system designed to give the State an initial opportunity to pass upon and correct alleged violations of its prisoners’ federal rights.”¹¹

The requirement of exhaustion of state remedies under 28 U.S.C. §§ 2254(b) and (c) has not been satisfied.¹² In addition, Turk has not pursued state court remedies that may be available and that must be exhausted before seeking review in this Court.¹³ Dismissal is without prejudice.

II. Certificate of Appealability

Turk has not made “a substantial showing of the denial of a constitutional right.”¹⁴ His petition presents no issues that are “debatable among jurists of

¹⁰ 28 U.S.C. §2254(b)(1)(A).

¹¹ *Picard v. Connor*, 404 U.S. 270, 275 (1971) (internal quotation marks and citation omitted).

¹² See *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Davis v. Silva*, 511 F.3d 1005, 1009 (9th Cir. 2008).

¹³ See generally, Montana Supreme Court Docket: <https://appecm.mt.gov/PerceptiveJUDDocket/> (accessed August 4, 2020); See also *O’Sullivan*, 526 U.S. at 845; *Rose v. Lundy*, 455 U.S. 509 (1982).

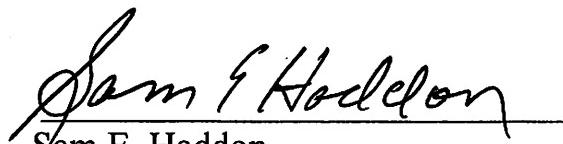
¹⁴ 28 U.S.C. § 2253(c)(2).

reason" or "adequate to deserve encouragement to proceed further."¹⁵ A certificate of appealability is denied.

ORDERED:

1. Turk's Petition¹⁶ is DISMISSED without prejudice.
2. The Clerk of Court should be directed to enter judgment of dismissal.
3. A certificate of appealability is DENIED.

DATED this 12⁺⁴ day of August, 2020.



Sam E. Haddon
United States District Court Judge

¹⁵ *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000); *see also Dixon v. Ryan* 932 F.3d 789, 808 (9th Cir. 2019).

¹⁶ Doc. 1.